IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WA.No. 1110 of 2004

(AGAINST THE JUDGEMENT IN OP.21615/2001 DATED 3RD MARCH 2004)

APPELLANT/RESPONDENT 1 IN THE ORIGINAL PETITION

THE STATE OF KERALA, REPRESENTED
BY THE CHIEF SECRETARY ,
SECRETARIAT, THIRUVANANTHAPURAM.

BY SPL. GOVERNMENT PLEADER SHRI C.T. RAVIKUMAR.

RESPONDENTS/PETIIONER & RESPONDENTS 2 & 3:
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1. DR.ANITHA S.NAIR, LECTURER,
DEPARTMENT OF PHARMACY, ATHURASRAMAM N.S.S.
HOMOEO MEDICAL COLLEGE, KURICHI, KOTTAYAM.

2. THE MAHATMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS, KOTTAYAM REPRESENTED
BY ITS REGISTRAR.

3. ATHURASRAMAM N.S.S. HOMOEO MEDICAL
COLLEGE, KURICHI, ADMINISTRATIVE OFFFICE,
N.S.S. HEAD OFFICE, P.O. PERUNNANI,
CHANGANASSERY, REPRESENTED BY THE SECRETARY AND
CORRESPONDENT.

R1 BY ADV SRI.K.P.DANDAPANI (SR.)
R2 ADV SRI. T.A. SHAJI, SC, M.G.UNIVERSITY
R3 ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)
ADV. SRI.P.GOPAL
ADV. SRI.S.EASWARAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1110 OF 2004

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Dated this the 23rd July, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The State Government, being aggrieved by the orders passed by the learned single Judge in O.P.No. 21615 of 2001 dated 3rd March, 2004, is before us in this Writ Appeal.

2. This Court while entertaining the Writ Appeal has granted an interim order staying the orders passed by the learned single Judge. The petitioner in the Original Petition had joined the third respondent College as a Tutor. Subsequently , she was promoted as a Lecturer . Since the post of a Reader and the post of a Professor was not available in the college, the petitioner/first respondent herein, had approached this court for a direction to the State Government to sanction the staff pattern as envisaged by the provisions of the Homoeopathy Central Council Act, 1973 (hereinafter referred to as "Act') and Homoeopathy (Minimum standards of Education) Regulations, 1983 (hereinafter referred to as 'Regulations') framed by the Central Council. This Court has allowed the Original Petition and has issued the following directions:

> *"There shall be a direction to the first respondent to sanction one post of Reader in the Department of Pharmacy in N.S.S. Homoeo Medical College, Kurichi without any further delay and in any event within three months from today. The post shall be sanctioned with effect from 01.11.1995 in accordance with the Regulations. The claim of the petitioner for promotion to the post of Reader/Associate Professor shall be*

considered as soon as orders sanctioning that post are issued by the Government. :

3. Further the Court was pleased to direct the State Government to consider the question of sanctioning of one post of Professor in the Pharmacy Department of the Homoeo College under the 3rd respondent without further delay and that a decision should be taken in that regard within six months from the date of receipt of a copy of the said judgment. Aggrieved by the said directions issued by the learned single Judge, the State Government is before us in this Writ Appeal.

4. Shri C.T. Ravikumar, Special Government Pleader would submit that the State Government could not sanction the post of a Reader and the post of a Professor in the 3rd respondent-College in view of extreme financial stringency that the State Government was facing in the year 2000. In support of that contention, the learned counsel has produced before us Annexure A1 Government letter dated 22.07.2000 addressed to one Dr. V.K. Ajithkumar, Treasurer, Kerala Homoeo Medical Graduates Association. By the said letter, the Government had furnished the following information:

"The Hon'ble High Court in the judgment dated 11.02.2000 in O.P.No. 4544/2000 -N has directed the respondent, State of Kerala to consider and pass orders on the Exhibit P3 representation (representation dated 01.12.1999) within three months from the date of receipt of a copy of the judgment. A copy of judgment has been received by Government on 24.04.2000.

Government have examined the Exhibit P3 representation in detail. Even in Government Homoeo Medical Colleges where Post Graduate Courses are being run, the strength prescribed by CCH cannot be maintained. Government is passing through extreme financial stringency and therefore they are not in a position to provide all the required staff in Athurasramam NSS Homoeo Medical College as per CCH norms as requested. Hence the request for creation of additional posts cannot be agreed to. The Exhibit P3 representation is disposed of as above and the court direction complied with."

5. Shri Ravikumar further submits that the State Government has no objection whatsoever, to consider the request of the petitioner in the Original Petition, since there is improvement in the financial condition of the State Government. But he further submits that any orders that would be made, should be given effect to, from the date of this order.

6. In view of the submission made by the learned Special Government Pleader, in our opinion, without going into further details of the case, the Writ Appeal is disposed of. Accordingly the following:

O R D E R

i) The State Government will now consider the directions issued by this Court while disposing of O.P.No. 21615 of 2001 by its order dated 3rd

March, 2004, as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this judgment.

ii) Any order that would be made by the State Government, shall be effective from today, i.e. 23.07.2007.

iii) In the facts and circumstances of the case, the parties are directed to bear their own costs.

iv) I.A.No. 584 of 2007 is also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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